

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On July 22, 2005 appellant, then a 57-year-old program support assistant, filed an occupational disease claim (Form CA-2) alleging that as a result of her federal duties she sustained carpal tunnel syndrome to her hands, wrists, and arms. She noted that she had been a typist/secretary for over 40 years and that she noticed that the pain worsened as a result of typing. Appellant did not initially stop work.

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome in September 2005. Appellant filed a claim for a schedule award (Form CA-7) on November 1, 2005. On July 19, 2006 OWCP issued a schedule award for 25 percent permanent impairment of the right upper extremity and 25 percent permanent impairment of the left upper extremity due to carpal tunnel syndrome. Appellant resigned from the employing establishment on August 20, 2006. On April 7, 2010 OWCP denied her claim for an increased further schedule award.

On May 23, 2011 Dr. Stanley H. Nahigian, a Board-certified orthopedic surgeon, performed a tenolysis with release of the flexor sheath, base of the ring finger, carpal tunnel release right wrist, and release of the ulnar nerve canal of Guyon on the right wrist. This surgery was authorized for right carpal tunnel syndrome. On July 7, 2011 Dr. Nahigian performed authorized carpal tunnel ulnar tunnel release on the left hand. In a June 17, 2011 report, he indicated that appellant could return to work with no restrictions effective August 17, 2011.

By letter dated July 1, 2012, appellant requested that the conditions of bilateral carpal trigger finger be accepted as causally related to the accepted injury. On January 30, 2013 OWCP denied her claim for a bilateral trigger finger condition. On February 6, 2014 it denied reconsideration of this decision.

On March 12, 2014 appellant filed a claim for compensation for the period March 4 through April 4, 2014. She subsequently filed claims for additional periods of compensation subsequent to that date.

In a March 4, 2014 progress note, Dr. Timothy Morley, an osteopath, diagnosed bilateral carpal tunnel syndrome. He noted that appellant had prior surgery for carpal tunnel syndrome. Dr. Morley noted that she was retired, but did work part time as a nursing assistant. Appellant told him that her nursing assistant duties did exacerbate her pain as she had a lot of heavy lifting and that at the end of her shift she seemed to be in worse pain. She told Dr. Morley that working as a nursing assistant over the past two months seemed to have triggered her discomfort.

In an April 4, 2014 progress note, Dr. Morley noted that appellant was currently performing occupational therapy three times a week, but still felt weakness in her hand's grasp and that she did not feel that the strength had come back to where it needed to be. He noted that she did not feel comfortable doing her job as a nursing assistant. Dr. Morley indicated that he was going to hold appellant off work due to her weakness in her hands and worsening pain. In a May 5, 2014 report, he opined that her job duties included repetitive use of her hands which caused her carpal tunnel syndrome. Dr. Morley noted that appellant's current symptoms were constant pain, numbness, and tingling, especially in the morning. He noted that her objective

findings were consistent with carpal tunnel syndrome with decreased sensation through the medial nerve distribution. Dr. Morley noted that the diagnosis of carpal tunnel syndrome has been made *via* electromyogram (EMG) and nerve conduction study, most recently on April 30, 2014, which documented bilateral residual median nerve impingement neuropathy. He noted that at this point appellant was unable to perform her normal work activities, including the normal activities of a nursing assistant included lifting, pushing, pulling, carrying, and grasping, secondary to her carpal tunnel syndrome. Dr. Morley noted that her carpal tunnel syndrome did not spontaneously worsen, but rather never resolved, noting that the current EMG documented residual carpal tunnel syndrome. He opined, "Simply stated, [appellant] has chronic pain from a median nerve neuropath bilaterally, and that given the longevity of this pathology, it is more likely than not that it will never resolve." Dr. Morley noted that appellant may respond to conservative care such as occupational therapy or rest. In a note of the same date, he indicated that she was totally disabled from May 6 to June 2, 2014.

In a letter dated May 8, 2014, appellant explained her work history. She noted that although Dr. Nahigian gave her permission to return to work after surgery, she did not attempt to return to work until October 2013, because prior to that she was employed as a live-in aide to her mother, who had dementia.

Appellant indicated in a June 23, 2014 letter that she was terminated from her part-time private employment, that she had held since March 2014, because she had not been in the position long enough to qualify for light duty or other consideration. She noted that she had been officially retired from the employing establishment since 2006, but had returned to work out of necessity.

In a letter dated February 11, 2015, a representative from Manor Care indicated that appellant was a former employee, and that on March 2, 2014 she took a personal leave of absence. The representative from Manor Care noted that they were unable to accommodate her light-duty status, but that she was eligible for rehire.

In a May 6, 2014 report, Dr. Robert Mark Fumich, a Board-certified orthopedic surgeon, noted that appellant's activities as a secretary for 35 years typing and using keyboards were consistent with the development of carpal tunnel syndrome and trigger fingers. He noted that there was a high correlation between carpal tunnel syndrome and development of trigger finger. Dr. Fumich opined that the left long trigger finger and right long and index trigger fingers are all work related in their development.

On June 13, 2014 Dr. Fumich performed a tenovagionotomy, left long finger. On June 27, 2014 he performed a left carpal tunnel release. On August 29, 2014 Dr. Fumich performed a right carpal tunnel release. On September 11, 2014 he indicated that he expected appellant to return to work without restrictions on November 28, 2014. OWCP approved her carpal tunnel surgery.

Appellant also submitted physical therapy and occupational therapy notes covering the period from May 1 through December 24, 2014.

By decision dated December 9, 2014, OWCP denied appellant's claims for recurrence. It noted that she incurred no wage loss during the period claimed as she had been terminated from her nonfederal place of employment.

In a December 8, 2014 progress note, Dr. Morley indicated that appellant still had some discomfort although she continued to improve and was having physical therapy. In a February 2, 2015 note, he indicated that he was going to continue to treat her conservatively and that she will continue with the braces and the cool soaks on an as needed basis. In a March 31, 2015 progress note, Dr. Morley noted that appellant still had complaints of stiffness in her right hand, that she stopped therapy because it was making her worse, and that conservative treatment will be continued. In a report dated June 24, 2015, he noted that she continued to have a little bit of discomfort in the right hand and was worried that her right middle finger was going to "trigger again." Dr. Morley also noted that appellant had some numbness in the right thumb, index, and middle fingers, but that they were better than before the surgery. Appellant noted that she still has some weakness in her hands bilaterally.

On December 30, 2014 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on July 14, 2015, she testified that she worked for the employing establishment for 22 years before she retired. Appellant stated that she asked for temporary total disability compensation in lieu of retirement and noted that she was off work for three months after surgery. In a letter dated July 24, 2015, appellant's counsel argued that she was entitled to compensation from the date of her surgery, June 13, 2014, through the date she was released to work, November 28, 2014. He also argued that appellant was entitled to temporary total disability compensation for the period March 4 through June 12, 2014, when she was under the care of Dr. Morley.

By decision dated September 10, 2015, the hearing representative affirmed OWCP's December 9, 2014 decision.

### **LEGAL PRECEDENT**

OWCP's definition of a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure. The term also means the inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>2</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical

---

<sup>2</sup> See *John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

reasoning.<sup>3</sup> A recurrence of disability is defined as the inability to work, caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup>

### ANALYSIS

In the instant case, appellant has failed to submit a sufficiently rationalized medical opinion which relates her claimed recurrence of disability effective March 4, 2014 to her original accepted employment-related carpal tunnel syndrome in September 2005. For this reason, the Board finds that she has not discharged her burden of proof.

OWCP accepted that appellant suffered carpal tunnel syndrome causally related to her federal duties. Dr. Nahigian performed bilateral carpal tunnel releases and in a June 17, 2011 report noted that she could return to work effective August 17, 2011. Appellant did not return to work at that time, and instead took care of her ill mother. She worked for Manor Care as a nurse's aide in early 2014, but on March 2, 2014 she took a personal leave of absence. Appellant claims benefits after she stopped work for the private employing establishment.

On June 27, 2014 Dr. Fumich performed a left carpal tunnel release and on August 29, 2014 he performed a right carpal tunnel release. Appellant also claimed compensation for the period of time she recovered from these surgeries. The Board has long recognized that the payment of medical expenses does not constitute acceptance of a claim.<sup>5</sup>

To meet her burden of proof to establish a recurrence of disability appellant must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>6</sup> In the absence of rationale, the medical evidence is of diminished probative value.<sup>7</sup>

The opinions of Dr. Morley and Dr. Fumich are of limited probative value as that they did not provide adequate medical rationale to support a conclusion that appellant's carpal tunnel syndrome in 2014 was related to her previously accepted claim.<sup>8</sup> Dr. Morley submitted notes detailing his treatment of her. In an April 4, 2014 work slip, he indicated that appellant was to remain off work and was disabled commencing April 4, 2014. Dr. Morley noted that she did not feel comfortable doing her job as a nursing assistant. He noted that he was going to hold appellant of work due to her weakness in the hands and worsening pain. Subsequent notes from

---

<sup>3</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

<sup>4</sup> *See* 20 C.F.R. § 10.5(x); *Douglas T. Pippin*, 54 ECAB 631 (2003).

<sup>5</sup> *See William Knauer*, Docket No. 00-2490 (issued May 17, 2002); *Carmelo L. Calderone*, Docket No. 97-2363 (issued October 20, 1999).

<sup>6</sup> *Supra* note 3.

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *C.T.*, Docket No. 14-1826 (issued January 8, 2016).

Dr. Morley noted continued treatment for carpal tunnel syndrome. In a May 5, 2014 report, he opined that appellant's job duties included repetitive use of her hands which caused her carpal tunnel syndrome. Dr. Morley noted objective findings of carpal tunnel syndrome, and found that she was unable to perform her normal work activities as a nursing assistant. He noted that appellant's carpal tunnel syndrome did not spontaneously worsen, but rather never resolved. Dr. Morley continued to treat her after her carpal tunnel releases with conservative treatment. However, he does not provide a rationalized medical opinion explaining how appellant had a recurrence of her accepted injury. The Board notes that she worked as a nurse's aide and indicated that her symptoms increased with this employment, which would indicate that her carpal tunnel syndrome did not spontaneously recur. Furthermore, Dr. Morley fails to provide a detailed report explaining how the carpal tunnel syndrome was related to her prior carpal tunnel syndrome. Rather, he simply indicated that it never resolved. As such, Dr. Morley's opinion is not sufficiently well rationalized to establish a recurrence of disability.

Dr. Fumich performed surgeries on appellant, including carpal tunnel releases and surgeries for her trigger finger. He opined that her current conditions were both causally related to her federal employment. Dr. Fumich did not discuss the progression of the conditions during lapse of time from 2005, when appellant's claim was accepted, to 2014. Such discussion would be necessary, especially in light of the fact that she did not work as a secretary for the employing establishment after 2006. Furthermore, Dr. Fumich did not address appellant's work as a nurse's aide. He did not provide a rationalized opinion as to how her carpal tunnel syndrome in 2014 was related to the carpal tunnel syndrome that was previously accepted by OWCP. In the absence of probative medical rationale, the medical evidence is of diminished value.<sup>9</sup>

Although appellant submitted notes from her physical therapist, a physical therapist is not considered a physician as defined under FECA.<sup>10</sup>

Whether a particular injury caused disability from employment is a medical issue which must be resolved by competent medical evidence.<sup>11</sup> As appellant did not submit sufficient medical evidence, she has not met her burden of proof to establish that she suffered a recurrence of disability on March 4, 2014.

Appellant may submit new evidence to OWCP with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

---

<sup>9</sup> See *supra* note 7.

<sup>10</sup> A.C., Docket No. 08-1453 (issued November 18, 2008). Under FECA, a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>11</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on March 4, 2014 causally related to her accepted work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 10, 2015 is affirmed.

Issued: May 16, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board